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Promises, Promises... : Family Farms and Estoppel (Again)

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Introduction

Family farms are a fertile source of litigation, especially when it comes to succession planning and inter-generational transfers. The problems are obvious: large value assets, emotional ties to the land, a lack of retirement planning and the 'older' generation's unwillingness to relinquish control, and managing the expectations of siblings or others who have worked on the farm. Recent years have seen a spate of estoppel cases involving farms in both Northern Ireland and England and Wales, brought by children, nephews, close friends and long-term partners who were promised or had expected to inherit farms.¹ The recent decision of the English Court of Appeal in *Davies v Davies*² is another example, this time involving an adult daughter who had worked on her parents' farm for years in the belief that it would pass to her. When her parents changed their minds, this particular daughter brought a successful proprietary estoppel claim. The issue then turned to satisfying the claim, and what financial remedy the daughter was entitled to.

I. *Davies v Davies*: The Factual Background

Mr and Mrs Davies had been farmers for over 50 years, running a successful farming business (predominantly dairy) which comprised a number of land holdings valued at around £3.85 million.³ The couple had three daughters, and wanted the farm to remain in the family; however, the second daughter (Eirian) was the only one who was interested in running it. Mr Davies told Eirian that the farm would be hers some day; in return she started working on the farm in 1985 without pay, but was given board and lodging at home, and money for clothes and leisure. Eirian left in 1989 after an argument with her father, but returned a couple of years later with her new husband, carrying out milking, veterinary and general farming work but was only paid (at the 'going rate') for the first of these jobs. In 1997, a partnership agreement was drawn up between Eirian and her parents; although Eirian signed the agreement on the expectation that her parents would do the same, they never did. By 1998, Eirian and her husband were living in one of the farm houses rent free, and the couple made

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¹ Notable examples include *Gillett v Holt* [2000] 2 All ER 289, *Thorner v Major* [2009] UKHL 18, *Suggitt v Suggitt* [2012] EWCA Civ 1140, *McDermott v McDermott* [2008] NI Ch 5 and *Mulholland v Kane* [2009] NICh 9.

² [2016] EWCA Civ 463.

³ Mr and Mrs Davies (now in their seventies) had farmed in partnership, but in 2002 had formed a company to take over the farming business. However, the company did not own any of the land which was the subject of this particular dispute.

improvements to the house, for which they were only partially reimbursed. At this time, Eirian was under the impression that she was a partner and would be entitled to an equal share in the profits of the business.

In 2001, Eirian left the farm, having admitted that she had had enough and no longer had any expectations of a future in the business. She had little further involvement until 2006, when she returned for a brief spell after the breakdown of her marriage, and then, at her father's request, on Boxing Day 2007, when he told her that the property would be hers to live in for life. Eirian worked at the farm for the following four years in return for £1,500 per month, rising to £2,000 per month by 2012. Discussions took place in and after 2008, about Eirian becoming a 49% shareholder in the company and acquiring these shares in tranches over a five-year period. In 2009, Eirian was shown a draft will under which she was left the land and buildings and a share in the company; a few months later, Mr and Mrs Davies were contemplating new testamentary arrangements under which the farm and company shares would go into a discretionary trust with the residue being split between their three daughters.⁴ Again, nothing materialised although a will was eventually made in which Mr Davies left Eirian his shares in the farming business. Eirian reacted angrily to this. Relations deteriorated further, and she left for the last time after a physical altercation in 2012, bringing any expectations around inheriting the farm to an end and prompting an estoppel claim.

The claim came before HHJ Jarman QC, sitting as a judge of the Chancery Division, who decided that Eirian had established a successful proprietary estoppel claim, based on (i) the long hours that she had worked on the farm without full payment, and (ii) the lost opportunity to work shorter hours in an environment of her own choosing and without the difficult working relationship with her parents.⁵ Mr and Mrs Davies appealed unsuccessfully, the Court of Appeal deciding that the judge was entitled to conclude that Eirian was entitled to equitable relief.⁶ Addressing the subsequent issue of how the equity should be satisfied, HHJ Jarman QC rejected both the daughter's claim to be awarded the land and the business, and the parents' offer to pay her £350,000. Instead, he made an award of £1.3 million to Eirian (around one-third of the farming business).⁷ The parents subsequently appealed this amount (with both sides accepting that any

⁴ Previous wills, made by Mr and Mrs Davies in 2002, had left one third of their estate to each of their other two children and the other on-third on trust for Eirian's daughters.

⁵ [2013] EWHC 2623 (Ch).

⁶ [2014] EWCA Civ 568.

⁷ [2015] EWHC 15 (Ch).

award would be purely monetary, and that the farm and business would not be transferred).

II. The Decision

The Court of Appeal began by reiterating the core elements of proprietary estoppel⁸ as laid out in cases such as *Gillett v Holt*⁹ and *Jennings v Rice*.¹⁰ Turning to the award of £1.3 million,¹¹ Lewison LJ (who delivered the judgment of the court) noted that there was no explanation of how HHJ Jarman QC had reached his ultimate conclusion, beyond an acceptance that justice lay somewhere between the polarised positions of the respective parties, and that the sum was “a fair reflection of the expectation and detriment” generated here.¹² However, the judge had “applied far too broad a brush and failed to analyse the facts that he found with sufficient rigour.”¹³ HHJ Jarman QC had taken expectation as an appropriate starting point, but, in this case, different expectations had been generated at different times. In 1985, Eirian’s expectation was to inherit the farm, but (given that she was only 17 and her parents in their forties) this must have been conditional on several decades of work- though she left the farm four years later. The next expectation- created by Eirian’s belief between 1998 and 2001 that she was a partner with her parents on the basis of a draft partnership agreement- was very different to an expectation of inheritance. When she left the farm in 2001 (and stayed away for five years), she had no expectations about the farm; and in 2008, the discussions around shareholdings must have exceeded any expectation of a partnership agreement. According to Lewison LJ:

What we have, then, is a series of different (and sometimes mutually incompatible) expectations, some of which were repudiated by Eirian herself, others of which were superseded by later expectations. This is far removed from a case like *Gillett v Holt* where the same unambiguous testamentary assurance was repeated many times publicly over a long period of years; or a case like *Thorner v Major* which followed the same pattern.¹⁴

Turning to the question of detrimental reliance, this was not (as HHJ Jarman QC had rightly pointed out) a case in which Eirian had “positioned her whole life on the basis of her parents’ assurances.”¹⁵

⁸ [2016] EWCA Civ 463 at [38].

⁹ [2000] 2 All ER 289.

¹⁰ [2002] EWCA Civ 159.

¹¹ Which, as counsel for Mr and Mrs Davies pointed out, was effectively £65,000 pa (after tax) to Eirian for every year that she worked on the farm.

¹² [2015] EWHC 15 (Ch) at [56].

¹³ [2016] EWCA Civ 463 at [42].

¹⁴ *Ibid*, at [48].

¹⁵ *Ibid*, at [49] citing [2015] EWHC 15 (Ch) at [34].

Deciding how much Eirian was entitled to meant placing a monetary value on both the financial and non-financial aspects of the detriment that she had suffered, and the expectations that had been generated. The parents had offered a payment of £350,000 based on a number of components (including specific sums calculated for accommodation, partnership and company interests, and underpayment for work that Eirian had carried out on the farm). According to the Court of Appeal, the judge had not analysed this offer properly and had not appreciated that the offer itself “already contained much that went towards satisfying Eirian’s expectations.”¹⁶ And, if this offer came close to satisfying the financial elements of the claim, the gap between this and the judge’s eventual award of £1.3 million was effectively representing the non-financial element of the daughter’s estoppel claim. In taking the view that Mr and Mrs Davies had a significant role in bringing their daughter’s expectation to an end, the judge had effectively blamed them for the breakdown in relations with their daughter- something that should be avoided:

[I]t is inherent in almost every claim based on proprietary estoppel that the representor or promisor has resiled from the representation or promise that he has made. It is, therefore, always the representor or promisor who has a significant role in bringing the expectation to an end. But there is no warrant (and no authority that we were shown) for increasing a monetary award on that account.¹⁷

The non-financial element of the claim in this case (identified by HHJ Jarman QC) was that Eirian had given up the ability to work shorter hours in a working environment of her own choosing and without the difficulties she had faced working alongside her parents. While that was true, the “effect of the rupture [was] that she [was] now free to do all that which the judge said she had given up.”¹⁸ It was not the case that Eirian’s whole life was positioned on her parents’ representations, and the award for the non-financial element of her claim would therefore be a relatively modest one. When compensating for non-pecuniary losses, “the difficulty of assessment is no bar to an award.”¹⁹ However, a value of close to £1 million for the non-financial elements of the daughter’s claim was too much here; instead Mr and Mrs Davies’ offer would be increased by £150,000, resulting in a final award of £500,000.

III. The Implications?

Cases based on proprietary estoppel are fact-sensitive, and the decision in *Davies* is yet another illustration of how different courts can arrive at very different conclusions based

¹⁶ [2016] EWCA Civ 463 at [56].

¹⁷ *Ibid*, at [62].

¹⁸ *Ibid*, at [65].

¹⁹ *Ibid*, at [68].

on the same set of facts. Where a claim is successful, satisfying the equity is an exercise in judicial discretion- one of the reasons why proprietary estoppel is such a flexible remedy, but with inherently unpredictable outcomes.

The overall outcome in *Davies* demonstrates the difficulties that can arise in valuing an estoppel claim. A financial reward was appropriate in this case: the parties had agreed that there should be no transfer of the land or business assets, and (in any event) this was not a case in which the daughter could have pointed to a specific piece of land or selected assets as having been specifically promised to her.²⁰ But how much should she be entitled to? A sum of £1.3 million might have felt like the 'right amount' to HHJ Jarman QC, but his failure to give a reasoned assessment as to why this sum was appropriate²¹ provided one basis for the decision being vulnerable on appeal. Another was the amount that the judge had awarded for the non-financial element of the claim: close to £1 million, when viewed alongside the parents' offer of £350,000 (which, according to the Court of Appeal, effectively met the financial element). Calculating the non-financial aspects of a successful estoppel claim (for example, lost opportunities) will always be more difficult, and *Davies* suggests that judges should be careful not to overestimate their value- especially in a situation like this, where the respective parties' expectations had clearly changed so much over the years. The Court of Appeal decision also makes it clear that people are entitled to change their minds (as the parents did here), and that judges should simply avoid an increased monetary award on this basis alone.

On a more general note, when it comes to matters of inheritance and the fate of family farms in particular, difficult conversations should not be avoided and arrangements documented properly where possible. Professional (and personal) experience dictates that inheritance disputes within family are very bitter- and that the long-term damage to relationships can be impossible to mend.

²⁰ Contrast with *Gillett v Holt* [2000] 2 All ER 289 and *McDermott v McDermott* [2008] NI Ch 5.

²¹ A point which could also be made about the final outcome in *Mulholland v Kane* [2009] NICH 9.